

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF LEE,

Plaintiff-Appellant,

v

WATER DISTRICT NO. 1 OF MIDLAND
COUNTY,

Defendant-Appellee.

UNPUBLISHED
February 21, 2012

No. 300341
Midland Circuit Court
LC No. 10-006611-CK

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right an order dismissing its case following the vacation of a preliminary injunctive order in its favor. We affirm.

This case arises from plaintiff's attempt to impose a \$6,200 connection fee on residents of Jerome Township and Lincoln Township if they connected to plaintiff's newly constructed water supply system. Defendant, a water district authority (Authority) that includes as members plaintiff, Jerome Township, and Lincoln Township, opposed plaintiff's plan. The Authority claimed that a Constituent Member Water Service Agreement (Agreement) between plaintiff and the Authority did not allow plaintiff to charge any connection fees; rather, only the Authority had the right to charge connection fees to recover direct costs of making customer connections. Thus, the Authority withheld authorization for any new connections to plaintiff's water system until plaintiff removed the \$6,200 fee. In response, plaintiff sued alleging breach of contract, intentional interference with a contract, and unconstitutional taking. Plaintiff also moved for a temporary restraining order (TRO) requiring that the Authority refrain from making connections without collecting a \$6,200 connection fee and place the fees in an escrow account pending the outcome of this matter. The request for a TRO was granted, and subsequently a preliminary injunction was entered with its continuance taken under advisement.

Then, by opinion and order, the trial court held that, although MCL 124.287(1)(c) does not prohibit plaintiff from imposing connection fees, plaintiff's right to do so constituted a permissible contract term that had to be included in the contract. "[W]hile MCL 124.287(1)(c) does allow for connection fees to be imposed by the municipality, the main purpose of the statute is to enumerate the possible contractual conditions that may be imposed by a municipality in financing the construction of municipal water systems." Here, the Agreement between plaintiff

and the Authority specifically provided that the Authority had the exclusive right to control and operate the water system, including the right to set and collect connection fees, not plaintiff. Thus, plaintiff had no right to impose connection fees. The court concluded: “The statute enumerates what provisions *may* be included in an attempt to raise funds for municipal water systems; however the Parties’ Agreement does not contemplate the setting or collecting of connection fees by Lee Township, and their failure to include such a contractual provision will not be altered by this Court.” Accordingly, the court vacated the preliminary injunction and, pursuant to MCR 3.310(A)(2), dismissed the case in its entirety. This appeal followed.

Plaintiff argues that the trial court erred in terminating the preliminary injunctive order and dismissing its case after construing MCL 124.287 to require that plaintiff’s right to impose connection fees on residents of Jerome and Lincoln Townships be included in the Agreement as a negotiated term. We disagree.

We review the denial of injunctive relief for an abuse of discretion. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008). Issues of statutory interpretation are reviewed de novo, as are issues of contract interpretation. *Herman v Berrien Co*, 481 Mich 352, 358; 750 NW2d 570 (2008); *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006).

“Townships have no inherent powers, but have only those limited powers conferred on them by the Legislature or by the state constitution.” *Graham v Kochville Twp*, 236 Mich App 141, 146; 599 NW2d 793 (1999). Our Constitution provides:

The legislature by general law shall authorize two or more counties, townships, cities, villages or districts, or any combination thereof among other things to: enter into contractual undertakings or agreements with one another . . . for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another . . . which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking. [Const 1963, art 7, § 28.]

And MCL 41.331 provides, in relevant part, that a township “may contract with another township . . . or authority for the furnishing of water to the water supply district for fire protection and domestic purposes under terms and conditions agreed upon between the township board and the board or other representative body of the . . . authority.”

Here, plaintiff contracted with an authority created pursuant to the Municipal Sewage Disposal, Water Supply, and Solid Waste Management Systems Act, MCL 124.282(1), which provides that “[a]ny 2 or more municipalities may incorporate an authority for the purpose of acquiring, owning, improving, enlarging, extending, and operating . . . a water supply system” See, also, MCL 124.281(a). Jerome and Lincoln Townships were among the original

municipalities to incorporate the Authority. Eventually, plaintiff joined the Authority as one of several member constituents. See MCL 124.286.

Thereafter, pursuant to MCL 124.287(1), plaintiff sought to enter into a contract with the Authority “providing for the acquisition, construction, improvement, enlargement, extension, operation, and financing of . . . a water supply system” MCL 124.287(1) provides, in relevant part:

(1) The authority and any of its constituent municipalities . . . may enter into a contract or contracts providing for the acquisition, construction, improvement, enlargement, extension, operation, and financing of a . . . water supply system The contract or contracts shall provide for the allocation and payment of the share of the total cost to be borne by each contracting municipality . . . in annual installments for a period of not exceeding 40 years. Each contracting municipality may pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract or contracts. If a contracting municipality makes such a pledge, it may include in its annual tax levy an amount sufficient so that the estimated collections from the tax levy will be sufficient to promptly pay when due the portion of the obligation falling due before the time of the following year’s tax collection. . . . If the contract or an unlimited tax pledge in support of the contract has been approved by the electors of a municipality, the tax may be in addition to any tax that the municipality may otherwise be authorized to levy If at the time of making the annual tax levy there are other funds on hand earmarked for the payment of the contractual obligation, credit for those funds may be taken upon the annual levy for the payment of the obligation. Other funds may be raised by each contracting municipality by the use of 1 or more of the following additional methods:

(a) The levy of special assessments on property benefited by a sewage disposal system, water supply system, or a combination of systems. The procedures relative to the levying and collection of the special assessments shall conform as nearly as is applicable to charter or statutory provisions for the levying and collection, except that a petition is not required from property owners.

(b) The levy and collection of charges to users and beneficiaries of the service or services furnished by the . . . water supply system

(c) The exaction of connection charges to be paid by owners of land directly or indirectly connected with the . . . water supply system

(d) The receipt of money derived from the imposition of taxes by this state, except to the extent that the use of the money for this purpose is expressly prohibited by the state constitution of 1963.

(e) The receipt of other funds that may be validly used for this purpose.

(2) The contract or contracts under subsection (1) may provide for any matters relating to the acquisition, construction, operation, and financing of the . . . water

supply system . . . as are considered necessary, including authorization to the authority to issue bonds secured by the full faith and credit pledges of the contracting municipalities, as authorized by section 9. The contract or contracts may provide for an appropriate remedy or remedies in case of default.

The Authority agreed to contract with plaintiff and a Constituent Member Water Service Agreement (Agreement) was executed. In its recitals, the Agreement provided as follows:

C. The Township has requested the Authority to provide water service to customers within a designated service area within the Township on a retail basis pursuant to the terms and conditions of this Agreement.

D. The Authority is willing to provide such water service to customers within the Township pursuant to the terms and conditions of this Agreement.

The terms and conditions of the Agreement were set forth, in relevant part, as follows:

Section 5. Rates, Charges and Billing.

A. Customer Rates. The Authority shall bill individually each customer in accordance with resolutions and the rules, regulations and procedures of the Authority, as may be amended. . . . If the Township requests, the Authority will add a Local Unit Fee charge to the water bills for customers within that specific township.

B. Connection and Integrated Connection Fees. Customers connecting to the District Water System shall pay a connection fee as set forth by the Authority, as may be amended. The connection fee covers costs incurred by the Authority to tap the water main and extend water service to the property line and to cover costs for the meter and yoke. The Authority shall be responsible for making the connection to the District Water System.

C. Capital Fee. Customers connecting to the District Water System shall pay a capital fee as set forth in the Master Water Service Agreement.

Section 6. Construction, Installation, Operation and Maintenance of the District Water System.

To provide water service to customers within the township, the Township shall construct, locate and install or cause the construction, location and installation of Facilities within the District Service Water Area. . . .

The Township shall be responsible for constructing, locating and installing or causing the construction, location and installation of the proposed Facilities without cost to the Authority. . . . Upon completion of the construction and approval by the Authority, said Facilities shall remain the property of the Township until the bonds or special assessment or other form of financing utilized by the township and associated with that portion of the District Water System are

paid in full after which ownership of the Facilities shall be transferred to the Authority.

* * *

Section 21. Entire Agreement. This Agreement constitutes an entire agreement between the parties and there are no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, between the parties hereto with respect to the subject matter of this Agreement that are not contained herein.

Section 22. Amendments. This Agreement may not be amended, changed, modified, altered, assigned or terminated without the written consent of the Authority, the Township, and the County.

Plaintiff argued in the trial court and argues here on appeal that, despite the terms and conditions set forth in the Agreement, MCL 124.287(1) authorized it to charge residents of Jerome and Lincoln Townships, constituent members of the Authority, connection fees for the purpose of funding the improvement. We disagree.

MCL 124.287(1), by its plain terms, granted plaintiff and the Authority the right to enter into a contractual relationship “providing for the acquisition, construction, improvement, enlargement, extension, operation, and financing of a . . . water supply system” That is, the main purpose of the statute is to authorize such a contractual relationship between plaintiff and the Authority. Neither plaintiff nor the Authority was obligated to enter into the contractual agreement. However, once they entered into the Agreement, their respective rights and obligations were to be set forth as terms and conditions that they “considered necessary.” See MCL 125.287(2). Accordingly, the recitals of the Agreement provided that plaintiff “requested the Authority to provide water service . . . pursuant to the terms and conditions of this Agreement.” And the recitals of the Agreement also provided that the “Authority is willing to provide such water service . . . pursuant to the terms and conditions of this Agreement.”

The primary goal of contract interpretation is to honor the intent of the parties. *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994). The intent of the parties is gleaned from the language used in the contract, which is construed according to its plain and ordinary meaning. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998) (citations omitted); *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 166; 550 NW2d 846 (1996). “[W]hen parties have freely established their mutual rights and obligations through the formation of unambiguous contracts, the law requires this Court to enforce the terms and conditions contained in such contracts, if the contract is not contrary to public policy.” *Bloomfield Estates Improvement Ass’n, Inc v City of Birmingham*, 479 Mich 206, 213; 737 NW2d 670 (2007) (quotation marks and citation omitted).

Here, included in the specific and negotiated terms and conditions of the Agreement were the issues of customer rates and connection fees, as set forth in Section 5. Thus, those terms and conditions of their contract were “considered necessary” by both plaintiff and the Authority. See MCL 125.287(2). And, pursuant to those terms and conditions, the Authority had the exclusive

right to set rates and collect connection fees. That is, the Authority did not agree to allow plaintiff to charge connection fees against residents of two constituent members in order for plaintiff to fund the improvement. That the Agreement fails to provide any method by which plaintiff was to fund the improvement is irrelevant. We agree with the trial court that the statute “enumerates what provisions *may* be included in an attempt to raise funds for municipal water systems.” And the Agreement only had to include any matters “considered necessary” by the parties to the contract. See MCL 124.287(2). The Authority may not have considered plaintiff’s particular method of funding the improvement necessary to the Agreement if such method did not impact the Authority or its constituent members.

Further, the Agreement included an express merger or integration clause as set forth in Section 21, which provided that the “Agreement constitutes an entire agreement between the parties” with respect to this improvement. Parties include merger clauses in contracts “to establish a written agreement as the exclusive basis for determining their intentions concerning the subject matter of the contract.” *UAW-GM Human Resource Ctr*, 228 Mich App at 497. Thus, it is clear that plaintiff and the Authority intended that the Agreement be the exclusive basis for determining each of their intentions concerning this improvement. And their intentions were clearly set forth with regard to the imposition of connection charges—only the Authority had the right to collect connection fees. Thus, because plaintiff could not prevail with regard to its request for injunctive relief, the trial court properly vacated the preliminary injunction and dismissed this case. See *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998).

Affirmed.

/s/ Mark J. Cavanagh

/s/ David H. Sawyer

/s/ Patrick M. Meter